either existing company currently has or could achieve on its own.¹⁷⁰ Further, the Applicants argue that the proposed transaction would result in roaming benefits both within Guam and internationally.¹⁷¹

- 45. Economies of Scale and Operating Synergies. The Applicants state that the transaction will create significant economies of scale and scope and will improve Guam Cellular's ability to compete against other wireless operators in Guam and the CNMI. The Applicants maintain that economies of scale and scope and operating synergies will be achieved by multiple means, including the consolidation of best practices, integration of operations, and reduced prices for equipment. The Applicants are consolidation of best practices, integration of operations, and reduced prices for equipment.
- 46. The Applicants also allege that, as a result of improved economies of scale and scope in the long term, the proposed transaction will result in cost reductions and savings that could potentially result in service price reductions.¹⁷⁴ For example, by consolidating functions such as technological research, system development and marketing, the Applicants state that they would be able to lower associated costs and pass the savings on to consumers.¹⁷⁵ They also expect that the improved economies of scale and scope achieved through [Redacted].¹⁷⁶
- 47. The Applicants also state that the combined company would be able to procure handsets and infrastructure equipment at lower prices.¹⁷⁷ The Applicants generally maintain that, "as equipment purchase volumes go up, equipment manufacturers are more willing to customize handsets and other device interfaces to match a carrier's service offerings." Specifically, the Applicants assert that the combined company would be in a better position to deliver customized handsets and that the collective procurement of handsets and accessories will lead to reductions in handset costs.¹⁷⁹
- 48. Improvements in Service Quality. The Applicants assert that the combined company will have the financial resources it needs to expand, upgrade, and strengthen the existing networks of Guam Cellular and Guam Wireless. They assert that DoCoMo's capital and expertise in providing advanced wireless services in Japan will provide additional service- and network-related benefits to Guam and CNMI consumers. DoCoMo states that it will enhance Guam Cellular's and Guam Wireless's existing

¹⁷⁰ Id.

¹⁷¹ Id. at 32; Response to WTB Information Request at 7-8.

¹⁷² Application, Attachment, at 24, 31.

¹⁷³ Response to WTB Information Request at 5-6; Application, Attachment, at 33.

¹⁷⁴ Application, Attachment, at 33. [Redacted]." Response to WTB Information Request at 5.

¹⁷⁵ Application, Attachment, at 33; Response to WTB Information Request at 5.

¹⁷⁶ Response to WTB Information Request at 5.

¹⁷⁷ Application, Attachment, at 33.

¹⁷⁸ Id

¹⁷⁹ Id.; Response to WTB Information Request at 5.

Application, Attachment, at 24, 32 (stating that, although "each carrier has operated a successful business and offered a variety of wireless voice and data services to its customers with consistent quality and affordability," they have not had the resources to develop networks necessary to provide seamless coverage and a full array of advanced services throughout Guam and CNMI).

¹⁸¹ *Id.* at ii, 31, 32.

operations, which will produce tangible benefits for consumers by increasing product choice, service quality (e.g., reduce the number of dropped calls and improve sound quality), and [Redacted]. 182

- 49. DoCoMo asserts that it will provide funds of approximately \$6.5 million to strengthen the merged company's facilities and infrastructure. The Applicants state that [Redacted]. The Applicants expect that [Redacted]. After the transaction closes, DoCoMo states that [Redacted]. 186
- 50. The Applicants and a number of commenters assert that DoCoMo's investment, which will allow the combined company to make improvements to existing CDMA and GSM networks, will not only benefit Guam Cellular and Guam Wireless subscribers, but potentially all wireless subscribers in Guam and the CNMI, 187 because, as DoCoMo upgrades the Guam Cellular and Guam Wireless networks, the other service providers may correspondingly upgrade and improve their own networks and services. 188
- 51. Promotion of Next Generation Services. The Applicants and a number of commenters state that the combined company will be able to deploy advanced wireless services throughout Guam and the CNMI far more quickly than Guam Cellular and Guam Wireless could without the capital, wireless experience, and management skills of DoCoMo. The Applicants argue that the deployment of advanced wireless services will promote competition not only in the applicable wireless market, but also in the mass-market for high-speed data services, which are today provided over telephone lines through xDSL services or over cable lines through cable modems. They assert that the combined company will provide customers with another technological choice for obtaining high-speed data services through a wireless connection. 191
- 52. Post-transaction, the Applicants intend to deploy GPRS on Guam Wireless's current GSM PCS network, [Redacted]." The Applicants expect to launch W-CDMA service on Guam Cellular's

¹⁸² Id. at ii, 3, 32; Response to WTB Information Request at 4. At this time, the Applicants have [Redacted]. Response to WTB Information Request at 1 (stating that DoCoMo [Redacted].).

¹⁸³ Application, Attachment, at 32; Response to WTB Information Request at 1.

 $^{^{184}}$ Response to WTB Information Request at 1.

¹⁸⁵ Id. (stating that [Redacted].").

¹⁸⁶ *Id*.

Application, Attachment, at 35; Comments of Marianas Visitors Authority at 1; Comments of Guam Governor at 1; Comments of Commonwealth Telecommunications Commission at 1; Comments of CNMI Resident Representative at 1.

Application, Attachment, at 35-36; Comments of Marianas Visitors Authority at 1; Comments of Commonwealth Telecommunications Commission at 1; Comments of CNMI Resident Representative at 1.

Application, Attachment, at 31-32 (stating that DoCoMo's extensive experience with such features and its ongoing investment in research and development will facilitate the delivery of such services to Guam and the CNMI); Comments of CNMI Governor at 1; Comments of Guam Governor at 1.

¹⁹⁰ Application, Attachment, at 35.

¹⁹¹ Id.

¹⁹² Response to WTB Information Request at 1.

[Redacted]. The Applicants assert that they [Redacted]. Additionally, the Applicants believe that [Redacted]. Using these upgraded networks, DoCoMo states that it plans on introducing features that are not currently offered in Guam or the CNMI, such as a wide variety of multimedia and data services, including video, games, mobile banking, ticket purchasing, travel information, and remote learning. He Applicants also are considering using Guam Cellular's Lower Band 700 MHz and WCS licenses for wireless broadband applications, which will allow Guam Cellular to offer an enhanced menu of new advanced wireless services, such as mobile broadband Internet.

53. Roaming. The Applicants assert that, with DoCoMo's investment and improvements to the network, the combined entity would provide advanced services to roaming customers and expand the availability of global roaming capability for international travelers. For example, through deployment of GPRS and W-CDMA services, [Redacted]. Decifically, the Applicants state that [Redacted]. Likewise, the Applicants state that, through the deployment of GPRS and W-CDMA services, [Redacted]. A number of commenters further assert that the Proposed Transaction will benefit the tourism industries, and ultimately the economies, of Guam and the CNMI, because a strong telecommunications network and the roaming capability provided by DoCoMo's investment will enhance Guam's and the CNMI's attractiveness as a tourist destination.

¹⁹³ *Id*.

¹⁹⁴ Id. at 1, 2.

¹⁹⁵ Id. However, the Applicants state that they "[Redacted]." Id. at 2.

Application, Attachment, at 35; HafaTel Press Release at 1. Upon introduction of new technology and an upgraded network system that offers GPRS and W-CDMA, [Redacted]. The Applicants state that [Redacted]. Further, they state that [Redacted]. Response to WTB Information Request at 7.

¹⁹⁷ Application, Attachment, at 32. The Applicants state that they "[Redacted]." Response to WTB Information Request at 4.

¹⁹⁸ Application, Attachment, at 32.

¹⁹⁹ Id

²⁰⁰ Response to WTB Information Request at 7.

²⁰¹ *Id*.

²⁰² Id. at 6.

²⁰³ The tourism industry is "the largest industry driving [the] economy" in Guam and the CNMI. Comments of CNMI Governor at 1; Comments of Guam Governor at 1. Commenters state that that the increased tourism will help the economies of Guam and the CNMI grow, and that the stronger economy brought on by increased tourism from Japan will ultimately benefit all of the citizens of Guam and the CNMI. Comments of CNMI Governor at 1; Comments of Guam Visitors Bureau at 1; Comments of Guam Governor at 1. Additionally, some commenters assert that the Proposed Transaction "will not only diversify investments, strengthen [CNMI] ties to one of Japan's leading corporations, but also provide a positive and confident signal for others to establish badly needed investments in our currently depressed economy." Comments of CNMI Resident Representative at 1.

²⁰⁴ Comments of CNMI Governor at 1; Comments of Marianas Visitors Authority at 1; Comments of Guam Visitors Bureau at 1; Comments of Commonwealth Telecommunications Commission at 1; Comments of Guam Governor at 1. The majority of the visitors to Guam and CNMI come from Japan. Comments of CNMI Governor at 1 (stating that the CNMI had approximately 530,000 visitors last year, most from Japan); Comments of Marianas Visitors Authority at 1; Comments of Guam Governor at 1 (stating that Guam had 1.2 million visitors last year, the majority (continued....)

3. Conclusion

54. We find that it is likely that the proposed transaction would result in many of the transaction-specific public interest benefits discussed above. Specifically, in the Guam and CNMI markets, we find that it is likely that this transaction will result in many public interest benefits and would allow the combined entity to more effectively compete with other carriers.

V. FOREIGN OWNERSHIP

55. The Applicants request a declaratory ruling that it would not serve the public interest to prohibit the 100 percent indirect foreign ownership of post-transaction Guam Cellular under section 310(b)(4) of the Act. The Applicants also request that the Commission authorize Guam Cellular to accept aggregate equity or voting interests of up to 25 percent from existing and new non-U.S. investors, in addition to their existing equity and voting interests, without seeking further Commission approval. We examine the foreign ownership interests that will be held in Guam Cellular, through the 100 percent indirect ownership interest that DoCoMo would obtain as a result of this Proposed Transaction, pursuant to our public interest analysis under sections 310(b)(4) and 310(d) of the Act and the Commission's foreign ownership policies adopted in the Foreign Participation Order. As part of that analysis, we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the foreign investment. Relying on Commission precedent, we find that the proposed transfer of control does not raise any issues under sections 310(a) and 310(b)(1)-(b)(3) of the Act. Our analysis focuses

of which were from Japan) Visitors Bureau (stating that 80% of Guam's visitors come from Japan); Comments of Commonwealth Telecommunications Commission at 1 (stating that approximately two-thirds of CNMI's visitors come from Japan); Comments of CNMI Resident Representative at 1. For example, some commenters maintain that the tourist market "may be strengthened by improved wireless communications between the CNMI and Japan," Comments of CNMI Governor at 1, in part, because they "will feel more comfortable [in the CNMI] with access to many of the services they presently receive at home." Comments of Commonwealth Telecommunications Commission at 1.

²⁰⁶ 47 U.S.C. § 310(b)(4), (d); see Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("Foreign Participation Order"), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing foreign investment pursuant to sections 310(b)(4) and 310(d). Foreign Participation Order, 12 FCC Rcd at 23918-21 ¶¶ 59-66. See also infra Section VII (National Security, Law Enforcement, Foreign Policy, and Trade Concerns).

208 Section 310(a) of the Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative holds any of the radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or en route radio licenses from being "granted to or held by" aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1)-(2). We find that no alien, representative, or foreign corporation holds any of the common carrier licenses in this case. Accordingly, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of section 310(a) or 310(b)(1)-(2) of the Act. See Deutsche Telekom-VoiceStream Wireless Order, 16 FCC Rcd at 9804-9809 ¶¶ 38-48. Additionally, because the foreign investment in Guam Cellular is held through a controlling U.S. parent company, DoCoMo Guam, the proposed transaction does not trigger section 310(b)(3) of the Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that themselves hold common carrier, broadcast and aeronautical fixed or en route Title III licenses. Compare 47 U.S.C. § 310(b)(3) with § 310(b)(4). See Request for Declaratory Ruling Concerning the Citizenship (continued....)

²⁰⁵ Application, Attachment, at 43.

on issues raised under section 310(b)(4). Based on the record before us, we conclude, for the reasons stated below, that it would not serve the public interest to deny consent to the proposed transaction because of the indirect foreign equity and voting interests that will be held in Guam Cellular through its parent DoCoMo Guam.

A. Legal Standard for Foreign Ownership of Radio Licenses

- 56. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.²⁰⁹
- 57. The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent.²¹⁰ The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark.²¹¹ Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.²¹² The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark. Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."
- 58. In the Foreign Participation Order, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization ("WTO") Member countries in U.S. common carrier and aeronautical fixed and en route radio licensees.²¹³ Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its "effective competitive opportunities" test with a rebuttable presumption that such investment generally raises no competitive concerns.²¹⁴ In evaluating an applicant's request for

²⁰⁹ 47 U.S.C. § 310(b)(4).

²¹⁰ See BBC License Subsidiary L.P., Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973 ¶ 22 (1995) ("BBC License Subsidiary").

²¹¹ See id. at 10972, 10973-74 ¶¶ 20, 24-25.

²¹² See id. at 10972, 10973 ¶ 20, 23.

²¹³ Foreign Participation Order, 12 FCC Rcd at 23896, 23913, 23940 ¶¶ 9, 50, 111-112.

²¹⁴ Id. The Commission stated, in the Foreign Participation Order, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. See id., 12 FCC Rcd at 23946 ¶ 131.

approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors.²¹⁵

- 59. We begin our evaluation of Guam Cellular's indirect foreign ownership under section 310(b)(4) by calculating the foreign equity and voting interests in DoCoMo Guam, the proposed U.S. parent of Guam Cellular. We then determine whether these foreign interests properly are ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries.
- 60. In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier. 17

B. Attribution of Foreign Ownership Interests

61. As indicated in Section II.B above, Guam Cellular will be a direct wholly-owned subsidiary of DoCoMo Guam, a U.S. corporation that, in turn, is wholly owned by DoCoMo, a Japanese corporation. ²¹⁸ DoCoMo itself is majority owned (approximately 62.15 percent) by NTT, a Japanese

To determine a foreign entity's home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity's incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which the world headquarters is located; (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. Foreign Participation Order, 12 FCC Rcd at 23941 ¶ 116 (citing Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order, 11 FCC Rcd 3873, 3951 ¶ 207 (1995)). For examples of cases applying the five-factor "principal place of business" test, see Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, Order and Authorization, 16 FCC Rcd 22897 (2001), erratum, 17 FCC Rcd 2147 (Int'l Bur. 2002), recon. denied, 17 FCC Rcd 14030 (2002); Space Station System Licensee, Inc., Assignor, and Iridium Constellation LLC, Assignee, et al., Memorandum Opinion, Order and Authorization, 17 FCC Rcd 2271 (Int'l Bur. 2002).

²¹⁶ See BBC License Subsidiary, 10 FCC Rcd at 10973-74 ¶¶ 24-25.

²¹⁷ See id. at 10973 ¶ 23; see also Wilner & Scheiner I, 103 F.C.C. 2d at 522 ¶ 19. Thus, when evaluating foreign voting interests in the U.S. parent company of a common carrier licensee, it is possible that multiple investors will be treated as holding the same voting interest in a U.S. parent company where the investment is held through multiple intervening holding companies or partnerships. Our purpose in identifying the citizenship of the specific individuals or entities that hold these interests is not to increase the aggregate level of foreign investment, but rather to determine whether any particular interest that a foreign investor proposes to acquire raises potential risks to competition or other public interest concerns, such as national security or law enforcement concerns. See Foreign Participation Order, 12 FCC Rcd at 23940-41 ¶¶ 111-15.

²¹⁸ Application at 1-2, 21; July 24, 2006 Response to IB Information Request at 3.

holding company.²¹⁹ The Japan Ministry of Finance holds approximately 38.53 percent of the issued and outstanding shares of NTT and, by Japanese law, two-thirds of NTT's shares must be held by Japanese citizens or entities.²²⁰

- 62. Based on the information and representations submitted by the Applicants, and consistent with the foreign ownership case precedent discussed in Section V.A, we calculate below the foreign equity and voting interests that will be held in DoCoMo Guam, directly or indirectly, by or through DoCoMo and NTT.
- 63. First, we find that DoCoMo directly will hold 100 percent of the equity and voting interests in DoCoMo Guam. Based on the information in the record, we find that DoCoMo's interests in DoCoMo Guam properly are ascribed to Japan, a WTO Member country.²²¹
- 64. We next look at the foreign equity and voting interests that will be held indirectly in DoCoMo Guam by and through NTT. We calculate that NTT, which currently owns 62.15 percent of the issued and outstanding shares of DoCoMo, indirectly will hold a 62.15 percent equity and voting interest in DoCoMo Guam. Based on the information in the record of the instant proceeding, we find that NTT's interests in DoCoMo Guam are properly ascribed to Japan, a WTO Member country. 223

²¹⁹ July 24, 2006 Response to IB Information Request at 2 (62.15% as of March 31, 2006, the date of the most recent shareholder list); Application, Attachment, at 4, 18 (DoCoMo is organized under the laws of Japan; NTT reorganized as a holding company in 1999). Both DoCoMo and NTT have a simple equity capital structure consisting of a single class of common stock with one vote per share. September 27, 2006 Response to IB Information Request at 1.

July 24, 2006 Response to IB Information Request at 2 (as of March 31, 2006, Japan Ministry of Finance held 38.53% of NTT's outstanding voting shares); Application at 19 (NTT Law requires that Japanese government own one-third or more of total number of issued shares of NTT, and foreign nationals and corporations may own up to one-third of NTT's total voting shares).

DoCoMo is a corporation organized under the laws of Japan. Application, Attachment, at 6, 43. See also NTT DoCoMo, Inc., Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended March 31, 2006 ("DoCoMo 20-F") at 12. In addition, the Applicants state that: the majority of DoCoMo's investment principals, officers, and directors are Japanese; DoCoMo's world headquarters is located in Japan; the majority of DoCoMo's tangible property is located in Japan; and DoCoMo derives the greatest sales and revenues from its operations in Japan. Application at 43 n.100. See also, e.g., DoCoMo 20-F at 12 (corporate headquarters are in Tokyo), 59 (NTT, a Japanese company, is largest shareholder), 88-92 (listing corporate officers and directors).

²²² Consistent with our foreign ownership case precedent discussed in Section V.A above, NTT's 62.15% equity and voting interests in DoCoMo flow through in their entirety to DoCoMo Guam because DoCoMo holds 100% of the equity and voting interests in DoCoMo Guam.

NTT is a company organized under the laws of Japan. Application, Attachment, at 43. See also Nippon Telegraph and Telephone Corporation, Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended March 31, 2006 ("NTT 20-F") at 17, 20. In addition, the Applicants state that: the majority of NTT's investment principals, officers, and directors are Japanese; NTT's world headquarters is located in Japan; the majority of NTT's tangible property is located in Japan; and NTT derives the greatest sales and revenues from its operations in Japan. Application, Attachment, at 43 n.100. See also, e.g., NTT 20-F at 20 (NTT is located in Tokyo), 22-23 (under NTT law, aggregate amount of NTT's voting rights that may be owned by foreign nationals and corporations must be less than one-third of NTT's total voting rights, and Japanese (continued....)

- 65. We also calculate that the Japan Ministry of Finance will hold 23.95 percent of the equity interests and 38.53 percent of the voting interests in DoCoMo Guam.²²⁴ We find that these interests, which are held by the Japanese government through the Ministry of Finance, also are properly ascribed to Japan, a WTO Member country.
- 66. We note that DoCoMo and NTT are publicly traded companies.²²⁵ Shareholders other than NTT collectively hold approximately 37.85 percent of DoCoMo. The Applicants represent that approximately 9.3 percent of DoCoMo's issued and outstanding shares is held by foreign investors from countries other than Japan and the United States, and that all of these shareholders are from WTO Member countries.²²⁶ The Applicants additionally represent that approximately 11.6 percent of NTT's issued and outstanding shares is held by investors from countries other than Japan or the United States, and that all but three of these shareholders, who collectively hold only 38 out of 13.78 million shares, are from WTO Member countries.²²⁷ On this basis, we find that investors from non-WTO Member countries hold indirectly less than one percent of DoCoMo's equity and voting interests.²²⁸ Thus, upon consummation of the proposed transaction, investors from non-WTO Member countries would hold indirectly less than one percent of DoCoMo Guam's equity and voting interests.²²⁹

Consistent with our foreign ownership case precedent discussed in Section V.A above, we use the multiplier to calculate the indirect equity interests of the Japan Ministry of Finance in DoCoMo as follows: 38.53% x 62.15% = 23.95%. By contrast, we do not use the multiplier to calculate the indirect voting interest of the Japan Ministry of Finance in DoCoMo, which the Ministry holds through its voting interest in NTT (i.e., we do not multiply the Japanese government's voting interest in NTT by NTT's 62.15% voting interest in DoCoMo). NTT currently owns a majority interest in DoCoMo and has the right to appoint the majority of the board of directors of DoCoMo. July 24, 2006 Response to IB Information Request at 2, 3-4. Because of these factors, we find that NTT controls DoCoMo and, thus, that the multiplier should not be applied to this link of the vertical ownership chain for the calculation of voting interests. See supra ¶ 60. We therefore calculate the voting interest of the Japanese government in DoCoMo as 38.53%, which is its voting interest in NTT.

²²⁵ Application, Attachment, at 3, 9, 18; July 24, 2006 Response to IB Information Request at 2.

²²⁶ July 24, 2006 Response to lB Information Request at 3.

²²⁷ Id

Consistent with our foreign ownership case precedent discussed in Section V.A above, we use the multiplier to calculate the indirect equity interests of NTT's non-WTO shareholders in DoCoMo as follows: (38/13,780,000 = 0.00028%) x 62.15% = 0.000002%. By contrast, we do not use the multiplier to calculate the indirect voting interests of NTT's non-WTO shareholders in DoCoMo (i.e., we do not multiply non-WTO shareholder voting interests in NTT by NTT's 62.15% voting interest in DoCoMo). As noted, NTT currently owns a majority interest in DoCoMo and has the right to appoint the majority of the board of directors of DoCoMo. See supra ¶ 64, note 222: July 24, 2006 Response to IB Information Request at 2, 3-4. Because of these factors, we have found that NTT controls DoCoMo and, thus, that the multiplier should not be applied to this link of the vertical ownership chain for the calculation of voting interests. See id. We therefore calculate the indirect voting interests of NTT's non-WTO shareholders in DoCoMo as follows: 38/13,780,000 = 0.00028%.

The less-than-one-percent indirect equity and voting interests that would be held indirectly in DoCoMo by non-WTO investors flow through in their entirety to DoCoMo Guam because DoCoMo would hold 100% of the equity and voting interests in DoCoMo Guam upon closing. See supra Section V.A. See also supra \P 64, note 222.

67. The record indicates that the vast majority of the foreign equity and voting interests that will be held directly and indirectly in DoCoMo Guam are properly ascribed to WTO Member countries. DoCoMo Guam and its proposed wholly-owned subsidiary Guam Cellular therefore are entitled to a rebuttable presumption that, following consummation of the proposed transaction, the indirect foreign ownership in Guam Cellular would not pose a risk to competition in the U.S. market. We find no evidence in the record that rebuts this presumption and, as we explain above, we find no basis to conclude that the proposed transaction is likely to harm competition. As described in Section VI below, we regulate Guam Cellular as a dominant carrier in its provision of common carrier services on the U.S.-Japan route. We also determine in Section VII below that the Executive Branch Agreement among the Executive Branch Entities and the Applicants addresses any national security, law enforcement, and public safety concerns.

C. Declaratory Ruling

68. Accordingly, this declaratory ruling permits the indirect foreign ownership of Guam Cellular by DoCoMo and its Japanese shareholders (up to and including 100 percent of the equity and voting interests), with the exception of NTT; by NTT and its Japanese shareholders, through NTT's investment in DoCoMo (up to and including 62.15 percent of the equity and voting interests), with the exception of the Japan Ministry of Finance; and by the Japan Ministry of Finance, through its investment in NTT (up to and including 23.95 percent of the equity interests and 38.53 percent of the voting interests). Guam Cellular may accept up to and including an additional aggregate 25 percent indirect foreign equity and/or voting interests from these foreign investors and other foreign investors, including non-Japanese investors who may own shares in DoCoMo and/or in NTT, without seeking prior Commission approval under section 310(b)(4), subject to three conditions. First, for purposes of calculating the aggregate 25 percent amount, Guam Cellular shall include non-U.S., non-Japanese owners of DoCoMo and NTT. Second, Guam Cellular shall obtain prior Commission approval before any foreign individual or entity, with the exception of NTT and the Japan Ministry of Finance, acquires individually an indirect equity and/or voting interest in Guam Cellular that exceeds 25 percent. Third, Guam Cellular shall obtain prior Commission approval before its direct or indirect equity and/or voting interest from non-WTO Member

²³⁰ See supra Section IV (Competitive Analysis). TeleGuam argues that the level of ownership and control by the Japanese government in DoCoMo calls for heightened scrutiny by the Commission. Petition to Deny at 3-5. We find no evidence that the Japanese government's 38.53% shareholding in NTT poses a threat to competition in the United States. Under the NTT Law, the appointment of NTT's directors and corporate auditors, changes to NTT's articles of incorporation, the disposition of profits, and the issuance of new shares require government approval. Application, Attachment, at 20. Applicants state, however, that it has been government policy since 1997 not to use the government's position as a shareholder to direct the management of NTT and, to the extent that NTT companies have transacted business with departments of the Japanese government, it has been on an arm's-length basis. Id. Applicants further state that the Japanese government currently does not hold a position on NTT's board of directors. Application, Attachment, at 20. Further, the NTT Law does not apply to DoCoMo. Application, Attachment, at 19. DoCoMo conducts its day-to-day operations independently of NTT, and neither NTT nor the Japanese government possesses special or preferential voting rights in DoCoMo. Application at 9-10. In addition, as the Commission stated in the Foreign Participation Order, the commitments made by WTO Members, such as Japan, the Commission's regulatory safeguards, and antitrust law should adequately address competitive concerns resulting from participation by foreign carriers from WTO Member countries in the U.S. telecommunications market. Foreign Participation Order, 12 FCC Rcd at 23905-09 ¶¶ 33-41.

 $^{^{231}}$ See infra ¶¶ 69-72.

 $^{^{232}}$ See infra ¶¶ 73-75.

countries exceeds 25 percent. We emphasize that, as a Commission licensee, Guam Cellular has an affirmative duty to continue to monitor its foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.²³³

VI. DOMINANT CARRIER SAFEGUARDS

- 69. The Applicants seek consent to transfer control of the international section 214 authorizations held by Guam Cellular and to assign to Guam Cellular the international section 214 authorization held by Guam Wireless.²³⁴ Pursuant to section 63.10 of the Commission's rules, the Applicants ask the Commission to grant Guam Cellular non-dominant status on all U.S. international routes except the U.S.-Japan route.²³⁵
- 70. As part of our public interest analysis under section 214(a) of the Act, we consider whether, upon consummation of the proposed transaction, the international section 214 authorization holder, Guam Cellular, will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that Guam Cellular has authority to serve pursuant to the international section 214 authorizations that will be transferred and assigned. Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as "dominant" on a particular route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route. 237
- 71. Following consummation of the proposed transaction, Guam Cellular will become affiliated, within the meaning of section 63.09 of the Commission's rules, with DoCoMo and other foreign carrier service providers.²³⁸ We find that, except for DoCoMo and its subsidiaries and affiliates that provide

²³³ See, e.g., Forcign Ownership Guidelines, 19 FCC Rcd 22612 (2004), erratum, 21 FCC Rcd 6484 (2006).

²³⁴ See File Nos. ITC-T/C-20060405-00234 and ITC-ASG-20060404-00181.

²³⁵ See, e.g., File No. 1TC-T/C-20060405-00234 at 6; 47 C.F.R. § 63.10.

²³⁶ 47 U.S.C. § 214(a).

Foreign Participation Order, 12 FCC Rcd at 23987, 23991-99 \$\text{\text{\text{q}}}\$ 215, 221-39. A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. 47 C.F.R. \$\\$ 63.10(c), (e). These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. international services could discriminate against rivals of its U.S. affiliates (i.e., vertical harms). In the Foreign Participation Order, the Commission concluded that these safeguards, in conjunction with generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from WTO Member countries in virtually all circumstances. In the exceptional case where an application poses a very high risk to competition in the U.S. market – where the standard safeguards and additional conditions would be ineffective – the Commission reserves the right to deny the application. Foreign Participation Order, 12 FCC Rcd at 23913-14 \$\frac{1}{2}\$ 51. In circumstances where an affiliated foreign carrier possesses market power in a non-WTO Member country, the Commission applies the effective competitive opportunities, or "ECO," test as part of its public interest inquiry under section 214(a). Foreign Participation Order, 12 FCC Rcd at 23944 \$\frac{1}{2}\$124.

²³⁸ 47 C.F.R. § 63.09. See, e.g., File No. ITC-T/C-20060405-00234 at 5-6 (Guam Cellular will become affiliated with foreign carriers in Japan, the United Kingdom, France, Italy, Germany, Belgium, the Netherlands, Hong Kong, China, Korea, Australia, Singapore, Brazil, Taiwan, Malaysia, and Sri Lanka). Each of these countries is a WTO Member. See Understanding the WTO: The Organization, Members and Observers, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Oct. 19, 2006).

service in Japan, none of the foreign carriers with which Guam Cellular will be affiliated is a monopoly provider of communications services or has a 50 percent market share in the international transport or local access market on the foreign end of a U.S. international route. Therefore, we will classify Guam Cellular as non-dominant on all U.S. international routes except the U.S.-Japan route.

72. With respect to the U.S.-Japan route, the Applicants do not request non-dominant classification, and we find no evidence in the record to support classification of Guam Cellular as non-dominant after consummation of the proposed transaction. We also find that the dominant carrier safeguards in section 63.10 will protect sufficiently against any potential vertical harms to U.S. customers on this route. Accordingly, pursuant to section 214(a) of the Act and section 63.10 of the Commission's rules, we condition our grant of the international section 214 transfer and assignment applications on the classification of Guam Cellular as a dominant carrier on the U.S.-Japan route effective upon closing of the proposed transaction.

VII. NATIONAL SECURITY, LAW ENFORCEMENT, FOREIGN POLICY, AND TRADE CONCERNS

- 73. When analyzing a transfer of control or assignment application in which foreign investment is involved, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.²³⁹ The Executive Branch Agreement among the Executive Branch Entities and Guam Cellular and DoCoMo Guam addresses Executive Branch national security, law enforcement, and public safety concerns about the post-transaction Guam Cellular system.²⁴⁰
- 74. The Executive Branch Agreement states that Guam Cellular and DoCoMo Guam have entered into the Executive Branch Agreement with the Executive Branch Entities to address issues raised by those departments and agencies, and to request the Commission to condition the grant of the assignment and transfer of control applications on compliance with the Executive Branch Agreement. The Executive Branch Petition states that the Executive Branch Entities have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers. After discussions with representatives of DoCoMo, the Executive Branch Entities have concluded that the commitments set forth in the Executive Branch Agreement address their concerns, and therefore asked the Commission to condition the grant on the Applicants' compliance with the commitments set forth in the Executive Branch Agreement.
- 75. In assessing the public interest, we take into account the record and accord deference to Executive Branch expertise on national security and law enforcement issues.²⁴⁴ As the Commission

²³⁹ Foreign Participation Order, 12 FCC Rcd at 23918 ¶ 59; Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, Report and Order, 12 FCC Rcd 24094, 24170 ¶ 178 (1997).

²⁴⁰ See supra ¶ 11.

²⁴¹ Executive Branch Agreement at 2, Recitals.

²⁴² Executive Branch Petition at 2 (unpaginated).

²⁴³ *Id*.

²⁴⁴ See Foreign Participation Order, 12 FCC Rcd at 23919-21 ¶¶ 61-66.

stated in the Foreign Participation Order, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch. We note that certain commenters suggest that national security issues warrant denial or conditions on the proposed transaction. We conclude that adoption of the network security condition sought by the Executive Branch Entities addresses these concerns. In accordance with the request of the Executive Branch Entities, in the absence of any objection from the Applicants, and given the discussion above, we condition our grant of the Application on compliance, by DoCoMo Guam and Guam Cellular, with the commitments set forth in the Executive Branch Agreement. We include the Executive Branch Petition and the Executive Branch Agreement as an Appendix to this Memorandum Opinion and Order and Declaratory Ruling.

VIII. CONCLUSION

76. We find that competitive harm is unlikely in both Guam and the CNMI mobile telephony markets as a result of this transaction. Both markets appear to have sufficient current and potential competitive wireless telephony operators after the transaction to curb any potential anticompetitive conduct by the merged entity. We find that the merged entity is unlikely to exercise market power to raise prices or reduce outputs. It is also unlikely that, given the number of competitors in the market, coordinated interactions will prevail after the transaction. Further, we find no record evidence to conclude that the foreign ownership of DoCoMo Guam, the parent of Guam Cellular, would pose a risk to competition in the U.S. market. We classify Guam Cellular as a dominant international carrier in its provision of service on the U.S.-Japan route effective upon consummation of the transfers and assignments of the relevant international section 214 authorizations. We determine that the Executive Branch Agreement among the Executive Branch Entities and the Applicants addresses any national security, law enforcement, and public safety concerns, and we condition the grant of the applications and declaratory ruling on compliance with the commitments made by Guam Cellular and DoCoMo Guam in the Executive Branch Agreement.

IX. ORDERING CLAUSES

77. Accordingly, having reviewed the applications, the petition, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310 (b), 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the applications for the assignment of licenses from Guam Wireless to Guam Cellular and the transfer of control of licenses from Guam Cellular to DoCoMo Guam, and the petition are GRANTED, to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling.

78. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and sections 63.04 and 63.24 of the Commission's rules, 47 C.F.R. §§ 63.04, 63.24, the applications to assign international section 214 authorizations from Guam Wireless

²⁴⁵ *Id.* at 23919 ¶ 62.

²⁴⁶ See, e.g., Petition to Deny at 5-8; Reply at 5-6 (arguing that the Commission should restrict DoCoMo and the Guam carriers it controls from entering into government contracts to avoid national security risks); Comments of CDG at 2 (stating that it is critical that government and military personnel, among others, have reasonable access to roaming services for their CDMA-based wireless services).

²⁴⁷ See infra \P 79.

to Guam Cellular and transfer control of domestic and international section 214 authorizations from Guam Cellular to DoCoMo Guam are GRANTED.

- 79. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 309, 310(b), 310(d), the Petition to Adopt Conditions to Authorizations and Licenses filed jointly by the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security on October 19, 2006 IS GRANTED. Grant of the applications and the declaratory ruling IS CONDITIONED UPON compliance with the commitments set forth in the Executive Branch Agreement, attached to this Memorandum Opinion and Order and Declaratory Ruling as an Appendix.
- 80. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, Guam Cellular SHALL BE CLASSIFIED as a dominant international carrier in its provision of service on the U.S.-Japan route effective upon consummation of the transfers and assignment of the international section 214 authorizations specified in this Memorandum Opinion and Order and Declaratory Ruling.
- 81. IT IS FURTHER ORDERED that the above grant shall include authority for DoCoMo to acquire control of: (a) any license or authorization issued to Guam Cellular or Guam Wireless and its subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licensees after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.
- 82. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition to Deny the assignment of licenses from Guam Wireless to Guam Cellular and the transfer of control of licenses from Guam Cellular to DoCoMo Guam filed by TeleGuam is DENIED for the reasons stated herein.
- 83. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch

Secretary

APPENDIX

PETITION TO ADOPT CONDITIONS AND EXECUTIVE BRANCH AGREEMENT

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of)	
)	
Guam Cellular & Paging, Inc.)	
Transferor,)	0002556700
)	0002553437
and)	IB File No. ITC-T/C-20060405-00234
	j.	IB File No. ITC-ASG-20060404-00181
DoCoMo Guam Holdings, Inc.,)	
Transferee,	ĺ	WC Docket No. 06-96
Joint Application for Consent to Transfer Control))	
of Guam Cellular & Paging, Inc.	j.	

PETITION TO ADOPT CONDITIONS TO AUTHORIZATIONS AND LICENSES

The United States Department of Justice ("DOJ"), including the Federal Bureau of Investigation ("FBI"), together with the United States Department of Homeland Security ("DHS") (collectively, the "Agencies"), respectfully submit this Petition to Adopt Conditions to Authorizations and Licenses ("Petition"), pursuant to Section 1.41 of the Federal Communications Commission's ("FCC" or "Commission") rules.²⁴⁸ Through this Petition, the Agencies advise the Commission that they have no objection to the Commission granting its consent in the above-referenced proceeding, provided that the Commission conditions the grant on DoCoMo Guam Holdings, Inc., ("DoCoMo") abiding by the commitments and undertakings contained in their Security Agreement (the "Agreement") attached hereto as Exhibit 1.

In the above-captioned proceedings, DoCoMo proposes to transfer control of Guam Cellular & Paging, Inc. ("Guam Cellular") to DoCoMo and to assign certain wireless assets of Guam Wireless Telephone Co. LLC (Guam Wireless) to Guam Cellular, as controlled directly by DoCoMo.

²⁴⁸ 47 C.F.R. § 1.41.

DoCoMo has filed a series of applications pursuant to Sections 214 and 310 with the FCC seeking consent for the transfer of control of Guam Cellular, and assignment of Guam Wireless to Guam Cellular as controlled directly by DoCoMo.²⁴⁹

As the Commission is aware, the Agencies have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers. After discussions with representatives of DoCoMo, the Agencies have concluded that the commitments set forth in the Agreement will help ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities. Accordingly, the Agencies hereby advise the Commission that they have no objection to the Commission granting the above-referenced Applications, provided that the Commission conditions its consent on compliance by the Applicant with the commitments set forth in the Agreement.

The Agencies are authorized to state that the Applicant does not object to the grant of this Petition.

See NTT Docomo Inc., Guam Cellular and Paging, Inc., and Guam Wireless Telephone Company, L.L.C. Seek FCC Consent to Assign and Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership, Public Notice, DA 06-947, WT Docket No. 06-96 (May 10, 2006).

Respectfully submitted,

Sigal P. Mandelker Deputy Assistant Attorney General Office of the Assistant Attorney General Criminal Division United States Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530 (202) 305-8319 Elaine N. Lammert Deputy General Counsel Federal Bureau of Investigation 923 Pennsylvania Avenue, N.W. Washington, DC 20532 (202) 324-1530

Stewart A. Baker Assistant Secretary for Policy United States Department of Homeland Security 3801 Nebraska Avenue, N.W. Washington, D.C. 20528 (202) 282-9708

October [], 2006

AGREEMENT

This AGREEMENT is made as of the date of the last signature affixed hereto by and between Guam Cellular and Paging, Inc. ("GC") and DoCoMo Guam Holdings, Inc. ("DCMG"), on the one hand, and the Federal Bureau of Investigation ("FBI"), the U.S. Department of Justice ("DOJ"), and the U.S. Department of Homeland Security ("DHS"), on the other (referred to individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, U.S. communication systems are essential to the ability of the U.S. government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the nation and its citizens to maintain the viability, integrity, and security of the communications systems of the United States (see, e.g., Executive Order 13231, Critical Infrastructure Protection in the Information Age, and Homeland Security Presidential Directive 7, Critical Infrastructure Identification, Prioritization, and Protection);

WHEREAS, protection of Classified, Controlled Unclassified, and Sensitive Information is also critical to U.S. national security;

WHEREAS, GC has an obligation to protect from unauthorized disclosure the contents of wire and electronic communications;

WHEREAS, GC holds the cellular A block licenses in Guam and the Commonwealth of Northern Mariana Island ("CNMI"). GC also holds several other licenses in Guam and the CNMI, including paging, common carrier fixed point-to-point microwave, industrial/business pool, wireless communications service, and 700 MHz lower band licenses. In addition, GC holds two international Section 214 licenses authorizing it to provide international global resale and facilities-based telecommunications services pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214. GC has provided high quality mobile wireless services, based upon the CDMA wireless standard, to residents of and visitors to Guam and the CNMI since 1992. GC also provides paging services, business and residential wireline domestic long distance and international (via direct dialing and calling card) services, and dial-up and DSL Internet access services. GC provides service under the brand names "Guamcell Communications" in Guam and "Saipancell Communications" in the CNMI.

WHEREAS, Guam Wireless Telephone Company L.L.C. ("Guam Wireless") holds a broadband Personal Communications Service ("PCS") B block license that serves Guam and the CNMI. Guam Wireless also holds an international Section 214 license pursuant to Section 214

of the Act authorizing it to provide international telecommunications services on a global resale and facilities basis. Guam Wireless provides high quality mobile wireless services under the brand name "HafaTEL" to residents of and visitors to Guam and the CNMI using the GSM wireless standard.

WHEREAS, GC is the subject of the Share Purchase Agreement among NTT DoCoMo, Inc. ("DCM"), GC, and GC's shareholders dated as of March 20, 2006 ("SPA");

WHEREAS, Guam Wireless is the subject to the Asset Purchase Agreement among DCM, Guam Wireless, and Guam Wireless' shareholders dated as of March 20, 2006 ("APA");

WHEREAS, DCM, GC and Guam Wireless have filed with the Federal Communications Commission ("FCC") applications (in FCC IB Docket No. 06-96) under Sections 214 and 310(d) of the Act, 47 U.S.C. §§ 214, 310(d), seeking FCC consent to assign and transfer of control Guam Wireless' and GC's licenses and requesting a declaratory ruling pursuant to Section 310(b)4 of the Act, 47 U.S.C. § 310(b)(4), that the proposed foreign ownership by DCMG is in the public interest;

WHEREAS, as disclosed to the FCC, DCMG is a corporation, organized and existing under the laws of the Guam, and which is a wholly-owned subsidiary of DCM, a Japanese corporation existing under the laws of the Japan;

WHEREAS, the FCC's grant of the applications in FCC IB Docket No. 06-96 may be made subject to conditions relating to national security, law enforcement, and public safety, and whereas GC and DCMG each have entered into this Agreement with the FBI, the DOJ, and the DHS to address issues raised by those departments and agencies, and to request that the FCC condition the assignment and transfer of control approved by the FCC on their compliance with this Agreement;

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement and public safety issues.

ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

- 1.1 "APA" has the meaning given in the Recitals.
- 1.2. "Call Associated Data" means any information related to a Domestic Communication or related to the sender or recipient of that Domestic Communication and, to the extent maintained by a Domestic Communications Company in the normal course of business, includes without limitation subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post cut-through dial digit extraction, in-band and out-of-band signaling, and party add, drop and hold.

- 1.3. "Classified Information" means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act, to require protection against unauthorized disclosure.
- 1.4. "Control" and "Controls" means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:
 - (i) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
 - (ii) the dissolution of the entity;
 - (iii) the closing and/or relocation of the production or research and development facilities of the entity;
 - (iv) the termination or nonfulfillment of contracts of the entity;
 - (v) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in subsections (i) through (iv) above;

or

- (vi) GC's obligations under this Agreement.
- 1.5. "Controlled Unclassified Information" means unclassified information, the export of which is controlled by the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. Chapter I, Subchapter M, or the Export Administration Regulations ("EAR"), 15 C.F.R., Chapter VII, Subchapter C.
- 1.6. "DCM" means NTT DoCoMo, Inc.
- 1.7. "DCMG" means DoCoMo Guam Holdings, Inc.
- 1.8. "De facto" and "de jure" control have the meanings provided in 47 C.F.R. § 1.2110.
- 1.9. "DHS" means the U.S. Department of Homeland Security.
- 1.10. "DOJ" means the U.S. Department of Justice.
- 1.11. "<u>Domestic Communications</u>" means (i) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States.

- "Domestic Communications Company" means all those subsidiaries, divisions, departments, branches and other components of DCMG, and any other entity over which DCMG has de facto or de jure control, that provide Domestic Communications, including GC. If any subsidiary, division, department, branch or other component of DCMG, or any other entity over which DCMG has de facto or de jure control, provides Domestic Communications after the date that all the Parties execute this Agreement, then such entity shall be deemed to be a Domestic Communications Company. If any Domestic Communications Company enters into joint ventures under which a joint venture or another entity may provide Domestic Communications and if a Domestic Communications Company has the power or authority to exercise de facto or de jure control over such entity, then DCMG will ensure that that entity shall fully comply with the terms of this Agreement. The term "Domestic Communications Company" shall not include acquisitions by DCMG in the U.S. after the date that this Agreement is executed by all parties only if the DOJ or the FBI find that the terms of this Agreement are inadequate to address national security, law enforcement or public safety concerns presented by that acquisition and the necessary modifications to this Agreement cannot be reached pursuant to Section 8.6 below. Nothing in this definition shall exempt any Domestic Communications Company from its obligations under Section 5.3.
- "Domestic Communications Infrastructure" means (a) transmission, switching, bridging and routing equipment (including software and upgrades) subject to control by and used by or on behalf of a Domestic Communications Company to provide, process, direct, control, supervise or manage Domestic Communications; (b) facilities and equipment used by or on behalf of a Domestic Communications Company that are physically located in the United States; and (c) facilities used by or on behalf of a Domestic Communications Company to control the equipment described in (a) and (b) above. Domestic Communications Infrastructure does not include equipment or facilities used by service providers other than Domestic Communications Companies that are: (a) interconnecting communications providers; or (b) providers of services or content that are (1) accessible using the communications services of Domestic Communications Companies, and (2) available in substantially similar form and on commercially reasonable terms through communications services of companies other than Domestic Communications Companies. The phrase "on behalf of" as used in this Section does not include entities with which a Domestic Communications Company has contracted for peering, interconnection, roaming, long distance, or other similar arrangements on which the parties may agree. Domestic Communications Infrastructure does not include equipment dedicated to the termination of international undersea cables, provided that such equipment is utilized solely to effectuate the operation of undersea transport network(s) outside of the United States and in no manner controls land-based transport network(s) or their associated system in the United States.
- 1.14. "Effective Date" means the date on which the transactions contemplated by the SPA and APA are consummated.
- 1.15. "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12).
- 1.16. "Electronic Surveillance" means: (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(4), (1), (2), and (12), respectively, and

electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 et seq.; (c) acquisition of dialing, routing, addressing or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 et seq. and 50 U.S.C. § 1841 et seq.; (d) acquisition of location- related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) access to, or acquisition or interception of, or preservation of communications or information as described in (a) through (e) above and comparable state laws.

- 1.17. "FBI" means the Federal Bureau of Investigation.
- 1.18. "Foreign" where used in this Agreement, whether capitalized or lower case, means non-U.S.
- 1.19. "GC" means Guam Cellular and Paging, Inc.
- 1.20. "Governmental Authority" or "Governmental Authorities" means any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau, or political subdivision, and any court, tribunal, judicial, or arbitral body.
- 1.21. "Intercept" or "Intercepted" has the meaning defined in 18 U.S.C. § 2510(4).
- 1.22. "<u>Lawful U.S. Process</u>" means lawful U.S. Federal, state, or local Electronic Surveillance or other court orders, processes, or authorizations issued under U.S. Federal, state, or local law for physical search or seizure, production of tangible things, or access to or disclosure of Domestic Communications, Call Associated Data, Transactional Data, or Subscriber Information.
- 1.23. "Network Management Information" means network management operations plans, processes and procedures; the placement of Network Operating Center(s) and linkages (for service off load or administrative activities) to other domestic and international carriers, ISPs and other critical infrastructures; descriptions of IP networks and operations processes and procedures for management control and relation to the backbone infrastructure(s) including other service providers; description of any unique/proprietary control mechanisms as well as operating and administrative software; and network performance information.
- 1.24. "OPM" means the Office of Personnel Management of the U.S. Government.
- 1.25. "Party" and "Parties" have the meanings given them in the Preamble.
- 1.26. "<u>Pro forma assignments</u>" or "<u>pro forma transfers of control</u>" are transfers that do not involve a substantial change in ownership or control as provided by the FCC's Rules.
- 1.27. "Share Purchase Agreement" has the meaning given in the Recitals.

- 1.28. "Security Officer" has the meaning given in Sections 3.10.
- 1.29. "Sensitive Information" means information that is not Classified Information regarding (a) the persons or facilities that are the subjects of Lawful U.S. Process, (b) the identity of the government agency or agencies serving such Lawful U.S. Process, (c) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance pursuant to Lawful U.S. Process, (d) the means of carrying out Electronic Surveillance pursuant to Lawful U.S. Process, (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, (f) information deemed to be Sensitive Information pursuant to Executive Order, decision or guidelines, and (g) other information that is not Classified Information designated in writing by an authorized official of a Federal, state or local law enforcement agency or a U.S. intelligence agency as "Sensitive Information." Domestic Communications Companies may dispute pursuant to Article 4 whether information is Sensitive Information under this subparagraph. Such information shall be treated as Sensitive Information unless and until the dispute is resolved in the Domestic Communications Companies' favor.
- 1.30. "Subscriber Information" means information relating to subscribers or customers of a Domestic Communications Company of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.31. "Transactional Data" means:

- (i) "call identifying information," as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a Domestic Communication;
- any information possessed by a Domestic Communications Company relating specifically to the identity and physical address of a customer or subscriber, or account payer, or the end-user of such customer or subscriber, or account payer, or associated with such person relating to all telephone numbers, domain names, IP addresses, Uniform Resource Locators ("URLs"), other identifying designators, types of services, length of service, fees, usage including billing records and connection logs, and the physical location of equipment, if known and if different from the location information provided under (iii) below;
- (iii) the time, date, size or volume of data transfers, duration, domain names, MAC or IP addresses (including source and destination), URLs, port numbers, packet sizes, protocols or services, special purpose flags, or other header information or identifying designators or characteristics associated with any Domestic Communication, including electronic mail headers showing From: and To: addresses; and

- as to any mode of transmission (including mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted. The term includes all records or other information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c)(1) and (d), but does not include the content of any communication. The phrase "on behalf of" as used in this Section does not include entities with which a Domestic Communications Company has contracted for peering, interconnection, roaming, long distance, or other similar arrangements on which the parties may agree.
- 1.32. "<u>United States</u>," "<u>US</u>," or "<u>U.S</u>." means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States, and specifically includes Guam and the Commonwealth of the Northern Mariana Islands.
- 1.33. "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(1).
- 1.34. Other Definitional Provisions. Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

ARTICLE 2: FACILITIES, INFORMATION STORAGE AND ACCESS

- 2.1. <u>Domestic Communications Infrastructure</u>. Except to the extent and under conditions concurred in by the FBI, DOJ and DHS in writing:
 - (i) all Domestic Communications Infrastructure that is owned, operated or controlled by a Domestic Communications Company shall at all times be located in the United States and will be directed, controlled, supervised and managed by a Domestic Communications Company; and
 - (ii) all Domestic Communications that are carried by or through, in whole or in part, Domestic Communications Infrastructure shall pass through a facility under the control of a Domestic Communications Company and physically located in the United States, from which Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. The Domestic Communications Company will provide technical or other assistance to facilitate such Electronic Surveillance.
- 2.2. <u>Compliance with Lawful U.S. Process</u>. Domestic Communications Companies shall take all practicable steps to configure their Domestic Communications Infrastructure to be capable of complying, and Domestic Communications Company employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with:

- (i) Lawful U.S. Process;
- (ii) the orders of the President in the exercise of his/her authority under § 706 of the Act, 47 U.S.C. § 606, and under § 302(e) of the Aviation Act of 1958, 49 U.S.C. § 40107(b) and Executive Order 11161 (as amended by Executive Order 11382); and
- (iii) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Act, 47 U.S.C. § 151 et seq.
- 2.3. <u>Information Storage and Access</u>. Domestic Communications Companies, effective upon execution of this Agreement by all Parties, shall store exclusively in the United States the following:
 - (i) stored Domestic Communications, if such communications are stored by or on behalf of a Domestic Communications Company for any reason;
 - (ii) any Wire Communications or Electronic Communications (including any other type of wire, voice or electronic communication not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account of a customer or subscriber of a Domestic Communications Company, if such communications are stored by or on behalf of a Domestic Communications Company for any reason;
 - (iii) Transactional Data and Call Associated Data relating to Domestic Communications, if such data are stored by or on behalf of a Domestic Communications Company for any reason;
 - (iv) Subscriber Information, if such information is stored by or on behalf of a Domestic Communications Company for any reason, concerning customers who are U.S.-domiciled, customers who hold themselves out as being U.S.-domiciled, and customers who make a Domestic Communication;
 - (v) billing records of customers who are U.S.-domiciled, customers who hold themselves out as being U.S.-domiciled, and customers who make a Domestic Communication, for so long as such records are kept and at a minimum for as long as such records are required to be kept pursuant to applicable U.S. law or this Agreement; and
 - (vi) Network Management Information, provided, however, that a duplicate copy of such Network Management Information may be maintained at DCM's headquarters at Sanno Park Tower 2-11-1, Nagata-cho, Chiyoda-ku Tokyo 100-6150, Japan.

The phrase "on behalf of" as used in this Section does not include entities with which a Domestic Communications Company has contracted for peering, interconnection, roaming, long distance,